



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

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**Testimony of Deborah Del Prete Sullivan
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Raised Bill No. 6556

An Act Concerning Civil Actions and Subpoenas Filed to Harass an Individual or After Numerous Actions Against the Individual Have Been Dismissed

Public Hearing - Judiciary Committee - March 30, 2011

The Office of Chief Public Defender opposes Raised Bill No. 6556, *An Act Concerning Civil Actions and Subpoenas Filed to Harass an Individual or After Numerous Actions Against the Individual Have Been Dismissed*. Specifically, Section 2 would require an attorney who is representing an inmate or probationer in a habeas proceeding to obtain the permission of the court prior to issuing a subpoena to the person who was the victim in the underlying criminal matter. The bill requires that a hearing be scheduled at which the attorney representing the petitioner must "make an offer of proof as to the content of the testimony expected to be given by the victim." Only if the court determines that the testimony to be given is relevant and necessary to the proceeding will the court permit the subpoena to be issued. The section further limits the examination of the witness so that it does not exceed the scope of the offer of proof and finding of the court. An issue arises however in those instances where the victim refuses to speak with petitioner's counsel. Counsel is expected to comply with the Rules of Professional Conduct in his/her treatment and dealings with the court and persons regardless of whether they are represented or not. Pursuant to Rule 4.4, counsel is required to have respect for the rights of third persons and "not use means that have no substantial purpose other than to embarrass, delay, or burden a third person. . . ". As a result, the language of this section is not necessary as it applies to attorneys licensed to practice here.

Section 3 would require court authorization prior to the issuance of a subpoena against the defendant. The defendant in a habeas proceeding, typically the Commissioner of Correction or the Warden, is referred to as the *Respondent*. This bill would place additional burdens on the petitioner's counsel in habeas cases and prohibit a subpoena to issue for the Department of Corrections where an inmate or probationer has had 3 or more complaints or appeals against the Department of Correction dismissed as "frivolous or malicious or failed to state a claim upon which relief may be granted." In such cases, the bill requires that counsel "make an offer of proof as to the content of the testimony expected to be given" at a hearing. Habeas petitions are routinely filed pro se by persons who are not legally trained in the law. Not only would these additional hearings impact upon the petitioner's right to access to courts, but also the financial resources of the Division.

In conclusion, this Office requests that the Committee oppose this bill.